IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

INCOME-TAX APPEAL NO. 58 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
APRIL 03, 2007.

Heard Shri Bhattad, learned counsel for the appellant and Shri Jaiswal, learned counsel for the respondent.

This appeal is filed by the assessee against the judgment of the Tribunal dated 21.02.2003 passed in ITA No. (SS) A/21/NAG/98 (Block Assessment 1986-87 to 1996-97) stating that the following questions of law arise out of the order of the Tribunal :

(i)“When search was conducted against Gopaldas Shankarlal Agrawal and not against Appellant whether notice issued under Section 158 BC and assessment order passed under Section 158-BC is legal and proper ?

(ii)Whether notice in absence of any indication appearing therein as if issued under Section

158 BD can be construed as issued under Section 158 BD, particularly when the Assessment order itself is passed under 158 BC ?

(iii) Whether the provisions of Section 158 BC or 158 BD can be invoked against the Appellant merely on the basis of the Documents (B1 – 17 & 18) seized from Gopaldas Agarwal and when Gopaldas Agrawal did not say that the document belonged to the Appellant and when the presumption under Section 132 (4A) was drawn against him as a matter of fact ?

(iv) When principles of natural justice were intentionally and consciously violated then whether such inherent mistake can be permitted to be corrected by remanding the case ?

(v) Whether the court can give direction in the form of feeding Assessing Officer to pass order in particular manner and whether such directions by way of remand order is legal and proper ?

(vi) Whether on the facts and circumstances of the case whether the ITAT is right in upholding order of block

Assessment by Assessing Officer which is clearly illegal and based on illegal assumption of power vested under law ?"

At the outset, it may be noted that while setting aside the Block Assessment Order and restoring the matter to the Assessing Officer for fresh assessment, the Tribunal has held that the notice issued under Section 158 BC is in fact notice under Section 158 BD and the same is valid. The grievance of the assessee is that the notice issued under Section 158 BC on 6.6.1997 is invalid on two grounds. Firstly, it is contended that search was carried out in the premises of Gopaldas Agrawal and not in the premises of the assessee and therefore notice under Section 158 BC could not be issued to the assessee. Secondly, it is contended that there is no satisfaction recorded in the present case for initiating block assessment proceedings against the assessee.

The facts relevant for the present appeal are that search action was under Section 132 of the Income-tax Act was initiated at the residential and business premises of one

Shri Gopaldas Agrawal on 19.11.1996 and the same continued up to 22.11.1996. In the course of search, the profit and loss account and balance sheet were found in the bed room of Gopaldas Agrawal. On the basis of the said documents as well as certain other enquiries conducted in that behalf, the departmental authorities came to the conclusion that the documents pertained to the business activities with which the assessee was concerned. Accordingly, notice under Section 158 BC of the Act was issued to the assessee on 6.6.1997. The assessee has not filed any return in pursuance of the said notice. Thereafter, the Assessing Officer proceeded with the assessment proceedings and completed the same by determining the total undisclosed income for the block period at Rs. 8,31,88,077/-.

The assessee being aggrieved by the aforesaid order, filed an appeal before the Tribunal. The Tribunal held that the notice was invalid, however, in respect of the merits of the case, the Tribunal held that adequate opportunity has not been given to the assessee and accordingly the Tribunal has

remanded the matter for fresh consideration on merits.

As regards the first contention of the appellant that the notice issued under Section 158 BC is invalid, the Tribunal has recorded a finding that the Assessing Officer before issuing notice had recorded reasons wherein it has been specifically stated that on the basis of the material seized from the premises of Gopaldas Agrawal which pertains to the assessee, notice under Section 158 BD has to be issued to the assessee. In this view of the matter, even though in the notice it is stated that the same is issued under Section 158 BC, it is apparent that there was only a technical error and the same is covered under Section 292 B of the Act. Therefore, the finding recorded by the Tribunal that the notice issued against the assessee is valid, cannot be faulted.

As regards the second argument of assessee that there was no satisfaction recorded before issuing the notice, it may be seen that before issuing the notice, the Assessing Officer had recorded the reasons as follows :

"M/s. O.J. Agrawal

Block Assessment

6/6/1997

Search was conducted at residence of Shri Shankarlal Agrawal & Others. During the course of search, certain documents were seized from residence of Shri Agrawal. There are certain notings on D.O.C. Inventorised on B1-/17 & 18. The said documents are balance sheet and profit and loss account as regards same jowar business carried out by OJA & GSA. Enquiries were conducted as regards same. Enquiries were also conducted by Invt. Wing, report of same is part of appraisal report. There was some tax evasion petition. This interalia suggested GSA means Gopal Das Agrawal and OJA as Omprakash Agrawal.

Hence in view of above document B1/17 & 18 and on basis of enquiries conducted and also on basis of appraisal report, I am of view that notice u/s.158 BC is required to be issued to O.J. Agrawal, Nagpur under provisions of Section 158 BD.

Hence, notice is issued to O.J. Agrawal u/s. 158 BC."

The Tribunal has recorded a finding that in the balance sheet, in the liability side, the capital shown at Rs.94,41,607.85 and the same was shown divided between three persons and one of them is OJA which according to the revenue pertains to the assessee and therefore the notice has been

issued to the assessee under Section 158 BD of the Act (wrongly shown as 158 BC). The fact that the Tribunal has remanded the matter for de novo consideration cannot be a ground to hold that there was no satisfaction recorded by the Assessing Officer before the notice under Section 158 BC (under section 158 BD) of the Act.

In this view of the matter, we do not find any merit in the appeal filed by the assessee. No question of law arises. Appeal is dismissed. No order as to costs.

JUDGE **JUDGE**

*GS.